

RESOLUTION

A RESOLUTION TO APPROVE A COOPERATIVE AGREEMENT WITH THE VIRGINIA OUTDOORS FOUNDATION FOR CONSERVATION EASEMENTS ACQUIRED UNDER THE PURCHASE OF DEVELOPMENT RIGHTS (PDR) PROGRAM

WHEREAS, on February 19, 2002, the Fauquier County Board of Supervisors adopted the Purchase of Development Rights (PDR) Program to support the agricultural economy of Fauquier County; and

WHEREAS, it is desired to have conservation easements acquired under the PDR Program co-held by another conservation organization to add certainty to the conservation purposes of such conservation easements; and

WHEREAS, on June 16, 2004, the Cooperative Agreement was approved by the Virginia Outdoors Foundation; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 21st day of June 2004, That the Cooperative Agreement with the Virginia Outdoors Foundation be, and is hereby, approved.

COOPERATIVE AGREEMENT BETWEEN THE VIRGINIA OUTDOORS FOUNDATION AND FAUQUIER COUNTY

THIS COOPERATIVE AGREEMENT ("Agreement"), made this ____ day of _____, 20____, by and between the VIRGINIA OUTDOORS FOUNDATION, an agency of the Commonwealth of Virginia (the "VOF"), and THE BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA, a body corporate and politic (the "County").

WHEREAS, the Board of Supervisors of Fauquier County, Virginia, established a Purchase of Development Rights Program on February 19, 2002, to acquire conservation easements for the purpose of protecting agriculture, providing open space and ameliorating the impact of development on the County; and

WHEREAS, the Open-Space Land Act ("OSLA"), Code of Virginia Section 10.1-1700 *et seq.*, provides authority for public bodies, including the County and VOF, to acquire title or any interests or rights in real property that will provide a means for the preservation or provision of open-space land; and

WHEREAS, Virginia Code Section 10.1-1701 authorizes counties to acquire open space conservation easements for the purpose of retaining or protecting natural or open space values of real property, assuring its availability for agricultural, forestall, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical or architectural aspects of real property; and

WHEREAS, Virginia Code Section 10.1-1703 authorizes counties to acquire conservation easements for the purpose of conserving lands for farming; and

WHEREAS, the purpose of the PDR Program is to preserve open-space land that will (1) protect water quality, air quality, and natural habitat; (2) protect farms, forest and grassland; (3) protect scenic and historic values important to tourism, community identity, and quality of life; and (4) save and protect agricultural property; and

WHEREAS, Sections 10.1-1800, 10.1-1801.1 and 10.1-1801.2 of the Code of Virginia provide for the creation of the VOF and its mission to conserve and protect Virginia's scenic, scientific, natural, historic, recreational, and open-space areas for the benefit of the public and create an Open Space Lands Preservation Trust Fund to be administered by the VOF; and

WHEREAS, it is the desire and intent of the parties to enter into this Agreement to memorialize the understanding between the County and the VOF in the holding and administration of conservation and/or open space easements created pursuant to the County's PDR Program, the VOF open space easement program, and in some instances, the Open Space Lands Preservation Act Trust Fund wherein the County and VOF are the designated co-holders of such easements.

NOW, THEREFORE, BE IT AGREED that the Virginia Outdoors Foundation, a state agency, and the County of Fauquier, wish to principle to undertake the co-holding of conservation easements according to the following terms:

1. COOPERATIVE AGREEMENT

This Agreement is intended to create a cooperative relationship between the County and the VOF. The parties agree that specific terms of the easement acceptance and funding will be enumerated in each individual case.

2. GUIDELINES FOR ACCEPTANCE OF THE EASEMENTS TO BE CO-HELD

Any jointly held easements shall be consistent with VOF's Guidelines and the County's PDR Program.

3. DEVELOPING THE DEEDS OF EASEMENT

The County shall provide the sample Easement form for all conservation easements create pursuant to the County's PDR Program. The County shall take sole responsibility in negotiating specific easement provisions with PDR Program applicants. VOF shall provide the County with its Sample Easement Form Guidelines, and Application and Data Proposal forms for any easements created pursuant to the Open Space Lands Trust Fund process.

4. OPEN SPACE LANDS PRESERVATION TRUST FUND APPLICATION

Sections 10.1-1801.2 and 10.1801.2 of the Code of Virginia provide for the creation of an Open Space Lands Preservation Trust Fund to be administered by the VOF. If funds from the Open Space Lands Preservation Trust Fund are used to acquire specific easements in Fauquier County in conjunction with County funds, then the County shall serve as the designated local co-holder pursuant to Section 10.1-1801.1(D)(2) of the Code of Virginia. In such instances, the County shall assist the property owner in the preparation of the easement proposal and application for grant funds by providing information to the property owner and may prepare or cooperate in the preparation of maps and documentary photographs of the property.

5. RECORD KEEPING AND INFORMATION SHARING

The County and VOF each shall be responsible for developing and maintaining a file on each easement property. A copy of any correspondence between either grantee and the easement grantor pertaining to the easement, or of monitoring photographs and other documentation shall be sent to the other grantee for inclusion in their file. Both grantees shall make their files available to each other upon request.

The VOF and the County shall make information and files pertaining to existing or prospective easements co-held, or to be co-held, available to the U.S. Internal Revenue Service. In the case of easements created and held pursuant to the PDR Program and the Open Space Preservation Trust, information and files shall be made available to each other, the U.S. Internal Revenue Service, the State Treasurer and/or the Office of the Attorney General.

6. MONITORING VISITS

The County shall have primary responsibility for performing a monitoring visit on a regular basis, preferably once per year, but not less frequently than once every three years. The County shall notify VOF at least ten (10) days prior to a scheduled monitoring visit to determine if VOF wishes to participate in the monitoring visit. At a minimum, the County will contact property owners by mail or telephone annually to verify ownership and condition of the property.

VOF may perform the monitoring visit and other monitoring functions in lieu of the County performing these activities, should VOF determine that the County is not adequately performing the function.

Information obtained during the monitoring visit, telephone call, or correspondence will be documented in a monitoring report. The party performing the monitoring will provide a copy of the monitoring report to the other co-holding party within 60 days of completing the report.

7. RESPONSE TO PERMITTED ACTIVITIES REQUIRING CO-HOLDER CONSENT

The easement grantor will notify the County and VOF in writing prior to undertaking any activities that require prior consent by the County and VOF. In such instances, the following procedures shall apply:

- A. VOF Notice to the County. If VOF does not approve of the proposed activity, VOF must notify the County, in writing, within 21 days of receipt of the written notice request from the easement grantor. The County will

interpret the lack of any notification from VOF within the allotted time as VOF's approval or acceptance of the proposed activity, unless such activity violates the easement, VOF's statutory mandate, or contradicts state or federal law or tax guidelines.

- B. Acknowledgement Letter. The County shall provide to the grantor within 30 days of receiving the requested written documentation acknowledging receipt of the grantor's request.
- C. Determination Letter. In most instances, the above noted Acknowledgement Letter will indicate VOF's and the County's approval or disapproval of the grantor's request. However, instances may arise where review of the grantor's request requires more than 30 days. Therefore, unless otherwise permitted by the grantor, the County and VOF shall have no more than 90 days following the receipt of the grantor's request to provide the grantor written determination approving or disapproving the request.
- D. Party Responsible for Communicating Determination to Grantor. VOF and the County may disagree on a course of action regarding the approval or disapproval of a grantor request. If no resolution to the disagreement can be found prior to the end of the 90 day review period noted in Paragraph 7(C), the disagreement shall be documented in writing and the party recommending disapproval of the proposed activity shall be responsible for communicating its determination to the landowner within the required 90 day period. If both VOF and the County agree on a course of action (approval or disapproval), the County shall take primary responsibility in communicating any determinations to the landowner.

8. CO-HOLDER ENFORCEMENT RIGHTS

Each co-holding party shall have the right to enforce the terms of any easement held jointly by the County and VOF. This enforcement right includes, but is not limited to, the right to perform any necessary enforcement, property owner notification, and monitoring functions

9. RESPONSE FOLLOWING DISCOVERY OF EASEMENT VIOLATIONS

If either party discovers an easement violation, which is not corrected immediately, it shall contact the other party by telephone as soon as possible. Within 30 days of discovering the violation, the discovering party shall give the landowner, with a copy to the other party, a Violation Notification which describes the prohibited use or activities, the specific easement terms violated, and any agreement with the landowner for corrective action. The parties shall review possible remedies for the violation before any remedy is required of the landowner. If the parties agree on an appropriate remedy, the County shall notify the landowner of the required remedy, monitor its implementation, and take any other action needed to enforce the terms of the easement. VOF may assist the County in performing one or more of these enforcement responsibilities.

If the parties cannot agree within 90 days from the issuance of the Violation Notification on the existence of a violation or on an appropriate remedy, each party shall document the disagreement in writing, and the party seeking to remedy the easement violation shall be responsible for all facets of the enforcement action, including notifying the landowner and the other party of the remedy required for the easement violation.

If either co-holding party, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the conservation values of the protected property, that party may pursue its remedies under the easement without prior consultation with the other co-holding party, provided it notifies the other party by phone or electronic facsimile immediately prior to pursuing its remedies.

10. NOTICES

Notices and other correspondence regarding this Agreement shall be delivered via certified mail, return receipt requested, to the following addresses or to such other addresses as the parties may designate in writing:

The Board of Supervisors of Fauquier County
Attention: Ray Pickering, Program Manager
Purchase of Development Rights Program
35 Culpeper Street
Warrenton, VA 20186
Phone: 540-349-5314
Fax: 540-349-5351

Virginia Outdoors Foundation
Attention: Leslie H. Grayson, Director
Northern Virginia Office
Aldie Mill
39395 John Mosby Highway
P. O. Box 322
Aldie, VA 30205
Phone: 703-327-6218
Fax: 703-327-6444

11. MISCELLANEOUS

- A. The Agreement represents the entire understanding between the parties and this Agreement shall not be modified unless in writing and signed by both parties.
- B. The Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.
- C. The Agreement shall be binding upon and inure to the benefit of the successors in interest to the parties.

- D. Neither party shall have the right to assign this Agreement or any of its rights or responsibilities hereunder

THE BOARD OF SUPERVISORS OF
FAUQUIER COUNTY, VIRGINIA
A Body Corporate and Politic

BY: _____

NAME: _____

TITLE: _____

VIRGINIA OUTDOORS FOUNDATION

BY: _____

NAME: _____

TITLE: _____